

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 3, 2003

IN RE:)	
)	
APPLICATION OF JACKSON ENERGY)	DOCKET NO.
AUTHORITY FOR A CERTIFICATE OF)	03-00438
CONVENIENCE AND NECESSITY)	

**ORDER GRANTING INTERVENTION OF CHARTER COMMUNICATIONS, INC.,
SETTING FILING SCHEDULE AND RE-SETTING HEARING DATE**

This matter initially came before the Hearing Officer in this docket for consideration of the Petition for Leave to Intervene and Request for Procedural Schedule ("Petition") filed by Charter Communications, Inc. ("Charter"). On October 16, 2003, after hearing argument of counsel for Jackson Energy Authority ("JEA") and counsel for Charter, the Hearing Officer granted intervention to Charter, established a schedule for the filing of testimony and continued the Hearing date from October 21, 2003.

Background

On July 15, 2003, JEA filed an application with the Tennessee Regulatory Authority (the "Authority" or "TRA") seeking a Certificate of Public Convenience and Necessity ("CCN") to provide facilities-based telecommunications services within Madison County, Tennessee. Director Pat Miller, Director Sara Kyle and Director Ron Jones are assigned as the voting panel in this docket. A Petition for Intervention was filed by Aeneas Communications, LLC

("Aeneas") on July 18, 2003. At an Authority Conference held on August 4, 2003, the voting panel appointed General Counsel or his designee as Hearing Officer to handle matters preliminary to the hearing before the voting panel. Without objection, Aeneas was permitted intervention for monitoring purposes.

On September 25, 2003, the Hearing Officer issued a Notice setting this matter for hearing on October 21, 2003. On October 10, 2003, Charter filed its Petition in this docket seeking intervention and the opportunity to conduct discovery in advance of the Hearing date. In its Petition, Charter stated that it is a competitive provider of telecommunications services and that one of its subsidiaries, Charter Fiberlink-Tennessee, is seeking approval from the TRA in Docket No. 03-00521 of an application for a CCN to provide competing local telecommunications services throughout the State, including in the service area sought by JEA in this docket. Charter stated that its "legal rights, duties, privileges, immunities or other legal interests or responsibilities may be affected or determined by the outcome of this proceeding..." Charter also alleged that there exist potential issues involving Tenn. Code Ann. § 65-5-208(b) relating to the exemption of certain services.

On October 13, 2003, the Hearing Officer sent a letter to the parties notifying them of the filing of Charter's Petition and requesting that any comments or objections be filed not later than October 15, 2003. On October 15, 2003, JEA filed objections to Charter's Petition, arguing that Charter did not demonstrate a particular interest in the proceeding; that the Petition, in alleging an issue under Tenn. Code Ann. § 65-5-208(b), raises an issue beyond the scope of the statutory certification requirements under Tenn. Code Ann. § 65-4-201; and that the orderly and prompt conduct of this case would be impaired if Charter's Petition were granted. Counsel for Aeneas did not assert a position regarding the Petition filed by Charter.

October 16, 2003 Conference Call

A conference call was held on October 16, 2003 between the Hearing Officer and counsel for JEA and counsel for Charter. During that conference call, counsel addressed the issues raised in Charter's Petition and the potential effect of intervention by Charter on the Hearing date. During the conference call, the Hearing Officer made the following determinations:

Charter's Intervention Request

The criteria for reviewing and determining an intervention request is established in the Tennessee Uniform Administrative Procedures Act. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

During the conference call, the Hearing Officer found that the Petition was filed by Charter in a timely manner in accordance with Tenn. Code Ann. § 4-5-310(a) and that Charter had demonstrated that it had legal rights, duties, or other legal interests which might be determined in this proceeding. Nevertheless, Charter did not sufficiently demonstrate that issues arising under Tenn. Code Ann. § 65-5-208(b) should be considered in this proceeding and the Hearing Officer struck that portion of Charter's Petition.

Establishment of a Procedural Schedule

After granting Charter's request for intervention, the Hearing Officer addressed Charter's request for the establishment of a procedural schedule which would provide for discovery by Charter. The Hearing Officer determined that because JEA had filed with the Authority testimony in support of its application, discovery of JEA's position would not be necessary. The Hearing Officer and the parties discussed the possibility of testimony being filed by Charter and the effect on the pending Hearing date. The Hearing Officer determined that the Hearing date scheduled for October 21, 2003 would need to be continued to allow for the filing of testimony by Charter and responsive testimony, if necessary, by JEA. The Hearing Officer and the parties discussed tentative hearing dates of November 3, 2003 and November 10, 2003 and a tentative schedule for the filing of testimony based on either of those hearing dates. The Hearing Officer advised the parties that a Hearing date and a schedule for the filing of testimony would be established as soon as possible.

After additional telephone conferences with the parties, including counsel for Aeneas, the following was established as the schedule for the filing of testimony and the Hearing date in this matter:

Charter's testimony shall be filed no later than **4:30 p.m., Tuesday, October 28, 2003.**

JEA's rebuttal testimony shall be filed no later than **4:30 p.m., Tuesday, November 4, 2003.**

The Hearing shall to begin on **Monday, November 10, 2003 at 11:00 a.m.**

Counsel for all parties were notified of the above schedule on October 24, 2003. A separate Notice re-setting the Hearing date was issued by the Hearing Officer on October 31, 2003.

IT IS THEREFORE ORDERED THAT:

1. Charter Communications, Inc. is given leave to intervene and participate in this proceeding as its interests may appear and receive copies of any notices, orders or other documents herein.
2. The filing of pre-filed testimony by Charter and rebuttal testimony by JEA shall proceed in accordance with the schedule set forth herein.
3. The Hearing in this matter shall begin on **Monday, November 10, 2003 at 11:00 a.m.**


J. RICHARD COLLIER
ACTING AS HEARING OFFICER